

# SAN DIEGO COUNTY SUPERIOR COURT RULES

Revised January 1, 2004

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## **SAN DIEGO COUNTY**

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**DIVISION III:  
CRIMINAL**

**CHAPTER 1  
GENERAL**

**Rule 3.1**

**Filing of Complaints**

Each arraignment department shall provide prosecuting agencies with specific information regarding the timely filing of complaints.

(Eff. 1/1/98, Rev. 1/1/2000; Renumbered 7/1/2001)

**Rule 3.2**

**Arraignment Options on Misdemeanors and Infractions**

Attorneys appearing in propria persona or who are retained to represent defendants who are not in custody and who are charged with misdemeanors or infractions may, in lieu of a court appearance, arraign matters informally if the attorney, as authorized by the defendant, enters a plea of not guilty and waives time for trial. The clerk will assign settlement conference, trial readiness conference, and trial dates as directed by the court.

**A. Counter Arraignments:** The attorney must personally appear in the clerk's office.

**B. Telephone Arraignments:** The attorney must personally telephone the clerk at the number provided by the court.

**C. Fax Arraignments:** Forms and rules governing this procedure may be obtained from the clerk's office.

**D. Exceptions:** These arraignment options are not available for defendants charged with child abuse or domestic violence countywide or cases prosecuted by consumer fraud and code enforcement divisions of the San Diego City Attorney's Office.

(Eff. 1/1/98, Rev. 1/1/2000; Renumbered 7/1/2001; Revised 7/1/2002)

**Rule 3.3**

**Continuances**

Continuances of hearings shall be granted only upon a showing of good cause and in accordance with the procedural requirements of section 1050 of the Penal Code.

(Eff. 1/1/98, Rev. 1/1/2000; Renumbered 7/1/2001)

**Rule 3.4**

**Bail Reductions Or Increases**

When bail has been set by a judge, all requests for an increase or reduction of said bail shall be made to that judge, except that any judge to whom a criminal matter is assigned for any stage of the proceedings may, in his or her discretion, on the

court's own motion, or on the motion of any party, modify the amount of bail set.

(Eff. 1/1/98, Rev. 1/1/2000; Renumbered 7/1/2001)

**Rule 3.5**

**Trial by Declaration**

A defendant may elect to have a trial by written declaration as provided under Vehicle Code section 40902 on an alleged infraction, unless the offense involves an accident, or alcohol or drugs pursuant to Article 2, Chapter 12, Division 11 of the Vehicle Code.

(Eff. 1/1/98, Rev. 1/1/2000; Renumbered 7/1/2001)

**Rule 3.6**

**Juror Questionnaires**

If juror questionnaires are proposed by counsel, they must be accompanied by a Juror Questionnaire Cover Sheet which shall be provided by the court.

(Eff. 1/1/99, Rev. 1/1/2000; Renumbered 7/1/2001)

**CHAPTER 2  
MOTIONS**

**Rule 3.7**

**General Requirements**

**A. Notice of Motion:** All notices of motion and notices of opposition thereto shall be in writing and shall prominently display on the first page the trial readiness conference and trial dates, a time estimate for the motion hearing, and the number of witnesses to be called at the hearing, if any.

**B. Time for Service** (except for motions to suppress heard at the preliminary examination):

**1.** All moving papers shall be served on the opposing party at least 15 court days before the time appointed for the hearing.

**2.** All papers opposing the motion shall be filed and served at least 5 court days before the time appointed for the hearing.

**3.** All reply papers shall be filed and served at least 2 court days before the time appointed for the hearing.

**4.** Proofs of service of the moving papers shall be filed no later than 5 calendar days before the time appointed for hearing.

**C. Points and Authorities:**

**1.** A memorandum of points and authorities must include a statement of the case and a statement of facts setting forth all procedural and factual matters relevant to the issue presented.

**2.** The memorandum must clearly specify the factual and legal issues raised and the specific legal authority relied upon for the motion.

**3.** Only the factual and legal issues set forth in the memorandum will be considered in the ruling on the motion unless it is established that the

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new issues were not reasonably discoverable before the motion was filed.

**4. Failure of the moving party to serve and file points and authorities within the time permitted without good cause may be considered by the court as an admission that the motion is without merit.**

**5. Except as to motions to suppress heard at the preliminary examination, failure of the responding party to serve and file points and authorities within the time permitted without good cause may be considered by the court as an admission that the motion is meritorious.**

**D. Abandonment of Motions:** Any party intending to abandon a motion already filed shall immediately notify opposing counsel and the clerk of the department in which the motion is to be heard, and shall also notify the clerk immediately if the case is disposed of by plea prior to the hearing or if the proceedings are suspended pursuant to Penal Code section 1368.

**E. Concession That Motion is Meritorious:** If the responding party elects not to oppose the motion, respondent shall immediately notify opposing counsel and the clerk of the department in which the motion is to be heard.

**F. Trial Department Motions:** No party shall file in any law and motion department a motion which must be decided by the trial judge. Such motions include, but are not limited to, motions to suppress based on confessions or admissions which are not a product of alleged Fourth Amendment violations (e.g., alleged violations of the Fifth and Sixth Amendments, such as Miranda violations, involuntary confessions, or denial of counsel), Trombetta/Youngblood motions, and severance motions resting on evidentiary considerations.

**G. Setting of Motions:** The clerk in the department where the pretrial motion is filed shall set a date for hearing of the motion at least 15 court days after the motion is filed.

**H. Length of Points and Authorities:** No opening or responding memorandum of points and authorities exceeding 15 pages shall be filed, absent an order from the judge of the court in which the motion is calendared. Such an order will be granted only upon a written application including a declaration setting forth good cause for the order. (Eff. 1/1/98, Rev. 1/1/2000; Renumbered 7/1/2001)

### Rule 3.8

#### Additional Requirements - Special Motions

**A. Motions to Dismiss or Strike** (Penal Code section 995) **and Demurrers:**

**1.** Defendant shall attach a copy of the current complaint, information, or indictment to the motion.

**2.** The notice of motion shall clearly state whether the defendant seeks to dismiss, strike or

demur to the entire complaint, information or indictment. If the defendant does not challenge the entire charging document, the notice of motion shall set forth the counts, enhancements, allegations, special circumstances, or other aspects of the charging document that are being challenged.

**B. Discovery Motions:** In accordance with Penal Code section 1054 et seq., discovery motions shall include a declaration by counsel, under penalty of perjury, setting forth the previous oral and written efforts to obtain discovery by cooperative and informal means, and showing how the opposing party has failed to comply with Penal Code section 1054.1 or 1054.3. The motion shall be limited to the disputed items, or class of items, listed in the declaration.

**C. Suppression Motions** (Penal Code section 1538.5):

**1.** If relevant to the motion, the defendant shall attach to the motion legible copies of the search warrant, affidavit in support of the warrant, and receipt and inventory of property.

**2.** Motions made at a felony preliminary examination must comply with Penal Code section 1538.5(f). Defendant may, but is not required to, file a reply brief. Proofs of service must be filed by the date of the hearing.

**3. Motions Made in All Other Felony and Misdemeanor Cases.**

**a.** Defendant must specify the precise grounds for suppression of the evidence, including the inadequacy of any justification for the search and seizure. If defendant's motion alleges the lack of a warrant as the sole basis for suppression, any opposition filed by the People should specify the justification for the warrantless search. The defendant should then file a reply specifying the inadequacies of the justification. However, absent a reply, the prosecution retains the burden of proof to establish its justification. The reply brief must be filed and personally served at least two court days prior to the hearing. The raising of new issues in the reply may constitute good cause for continuance to permit the prosecution to prepare for the hearing.

**b.** The motion shall include a list of specific items to be suppressed. A general request to suppress "all items seized" is not sufficient and may be deemed an abandonment of the motion. Only listed items will be considered by the court for suppression or return, unless any newly identified item could not reasonably be specified prior to the hearing.

**4. Motions Made Following a Felony Preliminary Examination.**

**a.** The motion shall state whether the party stipulates to the preliminary examination transcript, whether the motion was raised at the preliminary examination, and, if so, shall specify

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what factual findings and legal conclusions were made by the magistrate.

**b.** Failure to indicate whether or not the party stipulates to the preliminary examination transcript will be deemed a stipulation to the admission of the transcript. (Eff. 1/1/2000; Renumbered 7/1/2001; Revised 7/1/2002; Rev. 1/1/2003)

### **Rule 3.9**

#### **Additional Requirements - Felonies**

**A.** At the post-bindover arraignment on the information or arraignment on an indictment, the judge shall set a filing deadline for all pretrial motions which shall be 21 calendar days after the arraignment or such other date as the judge may, for good cause, assign.

**B.** All such motions, including motions to join in motions, shall be filed no later than the close of business on the assigned date.

**C.** No moving papers will be accepted thereafter for filing except by order of the supervising criminal judge extending time or granting relief from default.

(Eff. 1/1/2000; Renumbered 7/1/2001)

### **Rule 3.10**

#### **Motions Settings - Misdemeanors and Infractions**

Except where there is an order setting a hearing date, the moving party may request a date for the hearing. Dates are subject to confirmation by the clerk's office and mandatory time provisions of statutes, the California Rules of Court, and these rules.

(Eff. 1/1/2000; Renumbered 7/1/2001)

## **CHAPTER 3 HABEAS CORPUS, ERROR CORAM NOBIS, AND REPLEVIN PETITIONS**

### **Rule 3.11**

#### **Application**

This chapter does not apply to extraordinary writs in misdemeanor or infraction cases in which the San Diego Superior Court is named as respondent. Such writs are governed by Division VII rules (Appellate).

(Eff. 1/1/98, Rev. 1/1/2000; Renumbered 7/1/2001)

### **Rule 3.12**

#### **Place for Filing**

##### **A. Habeas Corpus Petitions:**

**1.** A petition for writ of habeas corpus should be filed in the criminal records division of the court that serves the area in which the underlying criminal case was or is pending.

**2.** A petition for writ of habeas corpus filed by or on behalf of an inmate at the R.J. Donovan Correctional Facility concerning a condition of confinement should be filed at the South County Division. Petitions challenging a parole eligibility finding should be filed in the criminal records division of the court that serves the area in which the underlying criminal case was adjudicated.

**B. Other Petitions:** A petition for writ of error coram nobis or replevin shall be filed in the department of the supervising criminal judge of the division in which the underlying criminal case was or is pending.

**C. Subsequent Pleadings:** Unless otherwise ordered, any pleadings filed by any party after the original petition shall be filed at the same location as the original petition, not in the department to which the petition has been assigned.

(Eff. 1/1/98; Rev. 1/1/99, Rev. 1/1/2000; Renumbered 7/1/2001; Rev. 1/1/2003)

### **Rule 3.13**

#### **Service of Petition**

**A.** Except as provided in sections B and C of this rule, a petition shall not be accepted by the clerk for filing unless it is accompanied by a proof of personal service upon the respondent.

**B.** When a petitioner is a defendant who is not represented by counsel, the clerk shall accept the petition for filing if it is accompanied by a proof of personal service or service by mail upon the respondent.

**C.** When a petitioner is an incarcerated prisoner, the clerk shall accept the petition for filing without requiring a proof of service.

(Eff. 1/1/98, Rev. 1/1/2000; Renumbered 7/1/2001)

### **Rule 3.14**

#### **Supporting Documents**

**A.** A petition for any of the writs included in this chapter shall be accompanied by the following:

**1.** A copy of the order or judgment from which relief is sought;

**2.** Any declarations, relevant records, transcripts, or any other documents supporting a claim;

**3.** Documentation to show that a petitioner has exhausted any administrative remedies prior to filing the petition, if required, or a declaration under penalty of perjury explaining why administrative remedies have not been sought.

**B.** If a petitioner does not submit the required documents or does not provide facts sufficient to excuse the failure to submit the required documents, the court may summarily deny the petition.

(Eff. 1/1/98; Rev. 1/1/99, Rev. 1/1/2000; Renumbered 7/1/2001)

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### **Rule 3.15**

#### **Format of Habeas Corpus Petitions**

Petitions for writ of habeas corpus filed in propria persona shall be submitted on the form approved by the Judicial Council pursuant to the California Rules of Court, rule 4.551(a). Petitions that are not in compliance with this rule will not be accepted for filing, unless good cause for noncompliance is shown.  
(Eff. 1/1/2000; Renumbered 7/1/2001; Revised 7/1/2002)

### **Rule 3.16**

#### **Disposition of Petition**

**A. Habeas Corpus Petitions:** The parties and the court shall follow the procedures set forth in the California Rules of Court, rules 4.550-4.552.

#### **B. Other Writ Petitions:**

1. Within 15 days after the filing of the petition, the court shall either summarily deny the petition or issue an order to respondent and any real party in interest to show cause why the relief requested in the petition should not be granted.

2. If such an order is issued, the court shall allow at least 5 days after its issuance for the respondent and any real party in interest to file a responsive pleading, except as herein provided.

3. Within 15 days after any responsive pleading is filed, the court may either (a) deny the petition; (b) issue an order to show cause why the requested relief should not be granted; (c) issue an alternative writ; or (d) upon proper notice, issue a preremptory writ in the first instance.

4. On motion of any party or on the court's own motion, for good cause shown, the court may shorten or extend time for doing any act under this rule.

(Eff. 1/1/98; Rev. 1/1/99, Rev. 1/1/2001; Renumbered 7/1/2001; Revised 7/1/2002)

### **Rule 3.17**

#### **Prohibition Against Ex Parte Contracts**

The court will not entertain or engage in any ex parte communications with any party or a party's attorney regarding the merits of a writ petition for an extraordinary writ or any stay requested therein. However, a party or a party's attorney and the court's research attorney may discuss procedural matters ex parte.

(Eff. 1/1/98, Rev. 1/1/2000; Renumbered 7/1/2001)

### **Rule 3.18**

#### **Appointment of Minors**

In any case in which a prosecution is initiated under the Penal Code arising from neglect or abuse of a child, the court shall appoint a guardian ad litem. The guardian ad litem for the child may be an attorney or a court-appointed special advocate (CASA).

(Adopted Eff. 1/1/2002; Revised eff. 7/1/2003)